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Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

CV'08-1272 BR

MARCO ARMENTA-CARDOSO,

Case No.	

Plaintiff,

v.

CITY OF GRESHAM; CITY OF GRESHAM POLICE DEPARTMENT, CARLA C. PILUSO, CHIEF OF POLICE; JAMES SEYMOUR; DIANA DEL GARBINO; JENNIFER RITCHARD; LEESA KLEPPER; and DIANA GROSSI,

NOTICE OF REMOVAL TO FEDERAL COURT

Defendants.

TO THE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON:

Please take notice that defendants hereby remove this action from the Circuit Court of the State of Oregon for the County of Columbia to the United States District Court for the District of Oregon, Portland Division. This removal is based upon the following facts:

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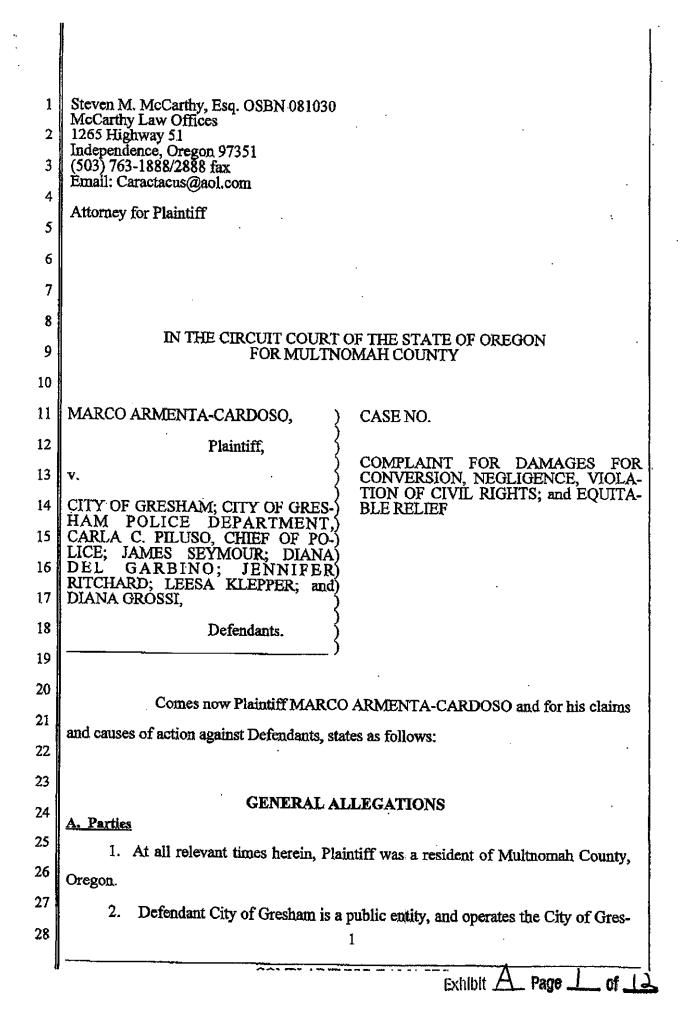
Page 1 - NOTICE OF REMOVAL TO FEDERAL COURT

- 1. The above-named defendants are defendants in a civil action in the Circuit Court of the State of Oregon for the County of Multnomah entitled "MARCO ARMENTA-CARDOSO, Plaintiff v. CITY OF GRESHAM; CITY OF GRESHAM POLICE DEPARTMENT, CARLA C. PILUSO, CHIEF OF POLICE; JAMES SEYMOUR; DIANA DEL GARBINO; JENNIFER RITCHARD; LEESA KLEPPER; and DIANA GROSSI, Defendants" Case No. 0810-14262. On October 7, 2008, plaintiff filed his Complaint. A copy of the Complaint, seeking monetary damages for alleged constitutional violations and state torts, is attached as Exhibit A.
- 2. This Notice of Removal is filed within thirty (30) days of receipt of notice by City of Gresham by defendant of plaintiff's Complaint claiming a violation of plaintiff's constitutional rights.
- 3. This lawsuit is a civil action for which this Court has original jurisdiction (federal question) under 28 USC § 1331 and is one in which may be removed to this Court by defendants pursuant to the provisions of 28 USC § 1441(a). The case arises under 42 USC § 1983 and appears to allege a violation of the Constitution of the United States.
- 4. Written notice of the filing of this Notice of Removal will be given to the plaintiff as provided by law.
- 5. A true copy of this Notice of Removal will be filed with the Court Clerk of the Circuit Court of the State of Oregon the County of Multnomah, as provided by law.

WHEREFORE, defendants pray that the above action now pending against it in the Circuit Court of the State of Oregon for the County of Multnomah be removed to the United States District for the District of Oregon.

DATED this 24th day of October, 2008.

(503) 480-7251 Attorney for Defendants



ham Police Department. Plaintiff is informed and believes that at all relevant times, Carla C. Piluso was the Chief of Police, and that the remaining named defendants were officers and agents of the Gresham Police Department and the City of Gresham, and responsible in whole or in part for the occurrences complained of herein. Plaintiff is at present unaware of the identities of others, known to Defendants, who were involved in the incidents complained of herein. Defendants, and each of them, acted either within the course and scope of their agency, employment, and duties, or did not; but at all times all Defendants acted under color of state law.

3. In doing the things herein alleged, Defendants, and each of them, if not deemed to be one individual defendant, acted and conspired with each remaining defendant in a common design to commit the breaches, representations, misfeasances, nonfeasances, and tortious conduct alleged herein, and in doing or not doing the things alleged herein, acted within the course and scope of said conspiracy and with the express or implied knowledge and consent of one another and each of them, and with the knowledge, actual or constructive, that the conduct of each other defendant was tortious or in breach of duty to Plaintiff. By reason of such conspiracy and concerted effort Plaintiff has been damaged as alleged. Accordingly, Defendants and each of them are liable jointly and severally to Plaintiff.

B. Jurisdiction and Venue

4. This Circuit Court has jurisdiction pursuant to Article VII, §9 of the Oregon Constitution, over the parties and subject matter herein; and also has concurrent jurisdiction over Plaintiff's claims pursuant to 42 USC §§1983 and 1988. Venue is proper because within this judicial district and at all relevant times, all parties live, the subject of the claims of Plaintiff arose herein.

C. Facts

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- 5. On the afternoon of June 10, 2007, Plaintiff became involved in a domestic dispute with his wife, Trinidad, as a result of which he was arrested. Defendants James Seymour, Diana Del Garbino, Jennifer Ritchard, and Leesa Klepper responded to the incident report. In the course of the arrest at Plaintiff's residence, said Defendants and others, whose identities are known only to Defendants, confiscated the firearms listed in attachment A hereto, along with related accessories and sporting goods including scopes, ammunition, knife collections, hunting gear, and sharpening tools. The firearms, knives, ammunition, and equipment were identified in minimum detail in an inventory prepared by Defendant Ritchard. Aside from the sentimental value the property had to Plaintiff, the same was worth well in excess of \$50,000, with some firearms increasing in value with time.
- 6. On or about June 11, 2007, Plaintiff was arraigned and ordered by the above-entitled Court to live elsewhere as a condition of his pre-trial release, and was not to possess his firearms. The said order was renewed on July 13, 2007.
- 7. In a certified, return receipt letter to him from Defendant Carla Piluso, signed by Defendant Deanna Grossi, postmarked July 25, 2007, and addressed to 227 SE 192nd Avenue in Portland, the residence from which he was excluded, he was advised that "a release order has been issued authorizing release" of his aforesaid property and that if he did not claim it, the same would be destroyed within 30 days thereof. Plaintiff never received the notice, nor did any such order issue from this or any Court, nor had Plaintiff then been convicted of any violation of law.
- 8. On or about September 19, 2007, the date set for his trial, and with the assistance of his court appointed attorney, Plaintiff entered a plea of guilty to two counts of harassment. He was placed on 18 months court probation. As a condition of his probation, he was fined and precluded from recovery of the firearms subject hereof until December 19, 2007, and only upon the completion of Court ordered evaluations.

- 9 After December 19, 2007, upon the successful completion of his court ordered evaluations, Plaintiff was free to return to his home and commenced efforts to retrieve his property. Defendants alleged that his property was destroyed.
- 10. On April 7, 2008, Plaintiff presented his claim against the City of Gresham pursuant to the Oregon Tort Claims Act. His claim was denied on June 11, 2008.

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FIRST CAUSE OF ACTION

[Conversion]

- 11. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1-10 as though fully set forth herein.
- 12. At all relevant times, Plaintiff was the owner of that certain personalty seized and identified in the inventory of Defendant Jennifer Ritchard, attached hereto as Exhibit A, in addition to related accessories and sporting goods including scopes, ammunition, knife collections, hunting gear, and sharpening tools, for which no accounting was made by Defendants. The total value of these items exceeds \$50,000.
- 13. Pursuant to the due process clauses of the US and Oregon Constitutions, and Art. XV, §10, of the latter, Defendants were under a duty to insure that no property owned by Plaintiff should be forfeited by government unless and until that person is convicted of a crime involving the property, or that said property be forfeited only upon due process of law.
- 14. Plaintiff is informed and believes and thereon alleges that at some time after the seizure of his aforesaid property, Defendants, acting in flagrant violation of Plaintiff's rights under the Oregon Constitution as aforesaid, converted the same to their own use and/or sold or destroyed the same, and thereafter ratified the conduct of the individuals involved as that of Defendant City of Gresham and the Gresham Police Department.

15. As a direct and proximate result thereof, Plaintiff has been damaged by reason of the loss of the aforesaid property in the minimum amount of \$50,000, together with interest thereon from and after June 10, 2007; and has sustained damages by reason of the loss of use of his property, the reasonable value of which is \$5,000 per year.

16. As a further direct and proximate result of the conversion of Plaintiff's property by Defendants, he has suffered substantial emotional distress, anxiety and anguish over the loss of his prized possessions, heirlooms, antiques, and cherished gifts, in addition to the loss of trust in local government, embarrassment, anguish, and humiliation, the reasonable value of which is \$150,000.

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SECOND CAUSE OF ACTION

[Negligence]

- 17. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1-10 and 11-16 as though fully set forth herein.
- 18. Defendants and each of them, were at all times under a duty to act competently, lawfully, and to exercise the skill and care that a reasonably prudent person would have exercised in similar circumstances and to comply with the law, including, but not limited to, identifying, creating, drafting, promulgating, and implementing appropriate and lawful practices and procedures regarding seized property, including Plaintiffs, and in enforcing the same and sanctioning deviation therefrom.
- 19. At all relevant times, Defendants knew, or in the exercise of reasonable diligence under the circumstances should have known that Plaintiff had not been convicted of any crime until September 19, 2007, and just as with any other domestic violence incident and consequences thereof, that he was removed from his home and ordered to stay away, that he was not permitted to have possession of firearms. Defendants, and each of them, were at all times actually and constructively aware, both as

ordinary citizens and as police officers, of the due process clauses of the US and Oregon Constitutions, and provisions of the Oregon Constitution, Article XV, Section 10, providing that no property shall be forfeited before conviction, and guarantees of the US Constitution that no property shall be taken except upon due process of law.

- 20. Notwithstanding the foregoing, all Defendants, among other responsibles, whose identities are not yet known to Plaintiff, failed to devise, institute, promulgate, and require compliance with any policy and/or procedure sufficient to protect the rights of Plaintiff herein as to his seized chattels, and if such policy or procedure was in place which did so, they failed to require its implementation as to the subject matter hereof, and failed to provide Plaintiff any notice of any imminent disposition of his firearms, nor to advise this Court or Plaintiff's counsel thereof, and instead failed to return Plaintiff's property to him and instead allegedly destroyed the same or converted it to their own use.
- 21. As a direct and proximate result of the foregoing, Plaintiff sustained the damages as herein alleged.

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THIRD CAUSE OF ACTION

[Federal and State Due Process]

- 22. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1-10, 11-16, and 17-21 as though fully set forth herein.
- 23. The failure of Defendants in their conduct, policies and practices as identified hereinabove transgressed substantive limits on state action set forth in the Fourth and Fourteenth Amendments to the Constitution of the United States, and in the Oregon Constitution, Article I, Section 10 and Article XV, Section 10.

IV

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EQUITABLE RELIEF

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24. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1-10, 11-16, 17-21, and 23 as though fully set forth herein.

25. An actual controversy has arisen between Plaintiff and Defendants as to the rights, obligations, and duties owed one another, particularly as to the conduct and policies of Defendants, and related issues, in seizing Plaintiff's chattels and depriving him thereof. Plaintiff alleges as aforesaid that Defendants City of Gresham, the Gresham Police Department, violated his rights by failing to implement an appropriate and lawful policies and procedures to insure that seized property, including his, was handled properly and lawfully; that the individual named defendants and others converted or negligently disposed of the property, either within the course and scope of their employment or not. Defendants dispute the foregoing.

V

RIGHT TO AMEND AND DEMAND FOR JURY TRIAL

26. Plaintiff is unaware of the identities of other individuals and entities responsible in the claims herein, including, but not limited to, the identities of the appraiser(s) of the Turquoise property subject hereof, used in the representations made by Defendants herein, and will seek leave to amend this complaint to include their identities and capacities upon discovery thereof.

27. Plaintiff demands a jury trial.

VI

PRAYER FOR RELIEF

Wherefore, having set forth various causes of action against Defendants, Plaintiff prays relief as follows:

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I	1. For general and compensatory damages in the amount of \$150,000 as and for
2	emotional distress occasioned by the conversion of personalty;
3	2. For special and compensatory damages for the reasonable value of the personalty
4	subject hereof in the amount of \$50,000; together with damages for the loss of use of said
· 5	personalty at the rate of \$5000 per month from and after December 19, 2007;
6	3. For treble the foregoing amounts;
7	4. For damages for violation of Plaintiff's constitutional rights in the amount of
8	\$500,000;
9	5. For a declaration determining the rights of the parties hereto and that the practices,
10	policies, procedures, and practices of Defendant City of Gresham and the Gresham
11	Police Department are constitutionally deficient;
12	6. For equitable attorneys fees and pursuant to statute or otherwise as the law allows;
13	7. For actual costs of suite herein;
14	4. For all such other relief as the Court deems just and proper.
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18	Steven M. McCarthy, Esq.
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